IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 40 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMUEL PHILIPBHAI PHILIPS - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MM TIRMIZI for Applicant(s) : 1,
Ms. Archana Raval, A.P.P. for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 13/07/2007

ORAL JUDGMENT

1. This Criminal Revision Application filed under Section 397 read with Section 401 of the Code of Criminal Procedure has been preferred by the applicant-original accused challenging the

judgment and order dated 6-8-1998 passed by the learned Metropolitan Magistrate, Ahmedabad, in Criminal Case no.2552/1996 as also the judgment and order dated 4-1-1999 passed by the Additional City Sessions Judge, Court no.15, Ahmedabad, in Criminal Appeal no.99/1998 confirming the same. By the impugned dated 6-8-1998, the learned Magistrate has convicted the applicant accused for the offences punishable under Section 66(1)(b) of the Bombay Prohibition Act and sentenced him to suffer R.I. for three months and fine of Rs.500/-, in default, S.I. for 30 days. However, the applicant-accused was acquitted of the offences punishable under Section 85(1)(3) of the Bombay Prohibition Act against which no appeal was preferred.

2. Short facts leading to the filing of the present Revision Application are that on 1st July, 1996 the applicant-accused who was on duty at the Institute of Kidney Disease and Research Centre, Ahmedabad, was found to be under the influence of alcohol. This fact having come to the knowledge of one Dr. H.L.Trivedi, he informed the Shahibaug Police Station, whereupon the police arrived and drew Panchnama of the physical condition of the applicant-accused in presence of two Panchas. On finding that smell of alcohol was emitting from the mouth of the applicant-accused, he was questioned as to whether he had pass/permit for consumption of alcohol to which he replied in the negative. Thereafter, the applicant-accused was sent for medical examination

and on receipt of the report from the Chemical Analyser to the effect that the blood sample collected of the applicant-accused contained alcohol, the accused was charge-sheeted for the aforesaid offences. The accused pleaded not guilty.

3. The learned Metropolitan Magistrate, Court no.2, Ahmedabad, having recorded and appreciated the prosecution evidence found the applicant-accused guilty and passed the judgment and order dt. 6-8-1998 as stated in para-1 of this judgment. The petitioner preferred appeal being Criminal Appeal no.99/1998 in the Sessions Court at Ahmedabad against the aforesaid judgment and order of conviction. The learned Additional City Sessions Judge, Ahmedabad, by his judgment and order dated 4-1-1999 ordered dismissal of the appeal. The applicant-accused has, therefore, approached this Court by way of the present Criminal Revision Application.

4. Heard Mr.M.M.Tirmizi, learned Counsel for the applicant-accused and learned A.P.P. for the respondent-State.

5. It is the submission of the learned Counsel for the petitioner Mr. Tirmizi that the Doctor Mr. Vinodbhai Laggaram Gupta who had collected and forwarded the blood sample of the applicant-accused has not complied with Rule 4 of the Bombay Prohibition(Medical Examination) and Blood Test) Rules, 1959,

("Rules" for short) which are mandatory, and as such, the Courts below have committed grave error in passing the impugned orders. On going through the deposition of Dr. Vinodbhai, it is found that the Doctor himself has not prepared the "phial", but the phial was already there and in this phial 11 miligram sodium coagulent was used as a preservative. The deposition of this witness also shows that after taking the blood and putting it in the phial and after applying seal, the phial was not put in freeze, but the same was placed in the personal locker of this witness where it remained for three days. This witness has admitted the fact that there was a refrigerator in the hospital. It is indeed surprising that even though there was a refrigerator in the hospital, the Doctor has not taken care to see that the phial is placed in the refrigerator. There is also no explanation coming forth on record with regard to this lapse on the part of this witness. Even the Panchas have turned hostile inasmuch as they have stated that they have only signed the papers but they have not seen the applicant-accused at that time. In view of this, there is every possibility of variation in the contents of the phial as the same was not kept in a cooling system.

6. It is settled law that the provisions of Rule 4 of the said Rules of 1959 are mandatory and Rule 4 thereof provides the manner of collection and forwarding of blood. As per Rule 4, the blood is to be collected in the syringe and it is to be transferred into the phial containing anti-coagulent and preservative and it has to be done by

the Doctor. In the case on hand, it is an admitted fact that as per the deposition of the Doctor, the phial was already there, he has neither prepared the phial nor in his presence the phial has been prepared. It is not borne out from the record as to who prepared the phial and at what point of time. In that view of the matter, it can safely be concluded that there is breach of the provisions contained in Rule 4 of the said Rules which are mandatory in nature, fatal to the case of the prosecution and vitiates the order of conviction. The applicant-accused would, therefore, be entitled to the benefit of doubt and the order of conviction cannot be sustained. I am fortified in my view my the decision rendered in the case of Kalidas Dhulabhai Vaghela v. The State of Gujarat reported in 1995 (2) G.L.H. 933 wherein it has been held that: " It is clear on plain reading of the aforesaid Rule 4 that the blood is to be collected in the syringe and to be transferred into the phial containing anti-coagulant and preservative and it has to be done by the Doctor."

7. In the result, this Criminal Revision Application is allowed. The impugned judgment and order of conviction and sentence dated 6-8-1998 passed by the learned Metropolitan Magistrate, Ahmedabad in Criminal Case no.2552/1996 as also the judgment and order dated 4-1-1999 passed by the Additional City Sessions Judge, Court no.15, Ahmedabad in Criminal Appeal no.99/1998 confirming the same are hereby quashed and set aside. Rule is

made absolute accordingly.

(M.D.Shah,J.)

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